



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2005

Mr. Randy A. Stonerod
Police Legal Advisor
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2005-02336

Dear Mr. Stonerod:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221034.

The Corpus Christi Police Department (the "department") received a request for three specified police reports. You state that you have released some of the requested information, but you claim that portions of the submitted information are excepted from disclosure under sections 552.130 and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the information we have marked under section 552.130.

You also claim that a portion of the remaining submitted information is excepted from disclosure under section 552.132 of the Government Code. Section 552.132 provides in pertinent part as follows:

(a) Except as provided by Subsection (f), in this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

....

(f) An employee of a governmental body who is also a crime victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the crime victim, including a photograph or other visual representation of the victim[.]

Gov't Code § 552.132(a), (b), (f). In this instance, however, the information is not held by the crime victim's compensation division of the Attorney General's Office. Therefore, section 552.132(b) does not apply. Likewise, you do not indicate and the documents do not reflect that the crime victim at issue is an employee of a governmental body. Thus, you have failed to demonstrate the applicability of section 552.132(f) of the Government Code to the submitted information. Consequently, the submitted information may not be withheld on the basis of section 552.132. *See generally* Gov't Code § 552.301(e) (governmental body must submit to this office, among other information, written comments stating reasons why stated exceptions apply that would allow information to be withheld).

We note that the submitted information contains an insurance policy number that is subject to section 552.136 of the Government Code.¹ Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

¹ The Office of the Attorney General will raise mandatory exceptions like section 552.136 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the information that must be withheld under section 552.136.

We also note that the submitted information includes social security numbers. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that another statute makes confidential.² Gov't Code § 552.101. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We note that this federal provision is intended to protect the privacy interests of individuals; therefore, this provision does not encompass the social security number of a deceased individual. *See* Attorney General Opinion H-917 at 3-4 (1976) (right of privacy lapses upon death); Open Records Decision No. 272 at 1 (1981). Thus, the social security number of the deceased individual may not be withheld under section 552.101 on the basis of this provision. We have no basis for concluding that the remaining social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of this federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the marked Texas motor vehicle record information in the submitted records must be withheld under section 552.130 of the Government Code. The marked insurance policy number must be withheld under section 552.136 of the Government Code. The social

² The Office of the Attorney General will raise mandatory exceptions like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* sources cited *supra* note 1.

security number of a living individual may be confidential under federal law. The remainder of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ramsey Abarca". The signature is fluid and cursive, with the first name "Ramsey" written in a larger, more prominent script than the last name "Abarca".

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 221034

Enc. Submitted documents

c: Ms. Connie Sue Huddleston
100 Townhouse Lane
Corpus Christi, Texas 78412
(w/o enclosures)